



GEORGIA M. PESTANA
Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NEW YORK 10007

DARA L. WEISS
Senior Counsel
daweiss@law.nyc.gov
Phone: (212) 356-3517
Fax: (212) 356-1148

By ECF

February 16, 2022

Honorable Gabriel W. Gorenstein
United States Magistrate Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

In Re: *New York City Policing During Summer 2020 Demonstrations*,
No. 20 Civ. 8924 (CM) (GWG)
This filing is related to all cases

Your Honor:

I am a Senior Counsel in the Office of Georgia M. Pestana, Corporation Counsel of the City of New York and I am among counsel for the defense in the above-referenced matter. I write in response to the “prophylactic order” proposed by plaintiffs (Dkt 394). At the outset, it is respectfully submitted that no such order is called for or required herein. Defendants fell behind in discovery obligations and the Court has imposed sanctions, pursuant to Rule 37. There is no need to order possible sanctions for possible future conduct, as the Court has an automatic remedy under the rules. A sanction should not be automatic, as every situation is unique, and an “across the board” remedy which does not take any explanation into consideration is improper. Imposition of money sanctions, which the Court did here, is in and of itself a prophylactic remedy, as it adequately advances “the prophylactic, punitive and remedial rationales” of discovery sanctions. See *Passlogix, Inc. v. 2FA Tech., LLC*, 2FA, Inc., No. 08 Civ. 10986 (PKL), 2010 WL 1702216, at *37 (S.D.N.Y. Apr. 27, 2010) (internal quotation marks and citation omitted).

Notwithstanding, if Your Honor does in fact choose to enter such an order, the proposed order submitted by plaintiffs is wholly inappropriate. Defendants have attached a redlined-version of plaintiffs’ proposed order, with comments, for the Court’s consideration.

Thank you for your consideration herein.

Respectfully submitted,

Dara L. Weiss s/

Dara Weiss
Senior Counsel
Special Federal Litigation Division

cc: ALL COUNSEL (via ECF only)